

AUG 31 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JUAN CARLOS PERAZA-CARRILLO,

Defendant - Appellant.

No. 08-50556

D.C. No. 3:07-CR-02806-BEN

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted August 20, 2009^{**}

Before: WALLACE, HAWKINS, and THOMAS, Circuit Judges.

Juan Carlos Peraza-Carrillo appeals from the 52-month sentence imposed

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

following his guilty-plea conviction for attempted entry after deportation, in violation of 8 U.S.C. § 1326(a). We have jurisdiction pursuant to 28 U.S.C. § 1291. We affirm, but remand to correct the judgment.

Peraza-Carrillo contends that the district court procedurally erred by imposing a sentence that it considered “reasonable” rather than one that was “sufficient, but not greater than necessary” to accomplish the goals of sentencing under 18 U.S.C. § 3553(a). We review for plain error, *see United States v. Dallman*, 533 F.3d 755, 761 (9th Cir. 2008), and affirm because Peraza-Carrillo has not established any error affected his substantial rights, *see id.* at 761-62.

As Peraza-Carrillo acknowledges, his contention that the sentence violates *Apprendi v. New Jersey*, 530 U.S. 466 (2000), is foreclosed. *See United States v. Garcia-Cardenas*, 555 F.3d 1049, 1051 (9th Cir. 2009) (per curiam).

We remand the case to the district court with instructions that it delete from the judgment the reference to 8 U.S.C. § 1326(b). *See United States v. Rivera-Sanchez*, 222 F.3d 1057, 1062 (9th Cir. 2000); *see also United States v. Herrera-Blanco*, 232 F.3d 715, 719 (9th Cir. 2000) (remanding sua sponte to delete the reference to § 1326(b)(2)).

AFFIRMED; REMANDED to correct the judgment.